City of Lafayette Staff Report

For:	City Council
By:	Ann Merideth, Community Development Director
Date Written:	August 28, 2008
Meeting Date:	September 8, 2008
Subject:	Ordinance No. 578 repealing Chapter 6-26, Public Art, and adding Chapter 2-12, Public Art Commission, and Chapter 11-7, Public Art

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Summary

The proposed ordinance updates the City's public art program to include a public art commission, provisions for gifts of artwork, and more details about public art criteria, deaccession, and artwork maintenance.

Background and Discussion

The City's current public art program was adopted in 2004 with the addition of Chapter 6-26 to the Municipal Code. It is simple and similar to programs in other cities in that it requires a 1% contribution of a project's costs in art or fees. Since the ordinance became effective, its requirements were applied to the Mercantile and Woodbury projects. The Lafayette Library and Learning Center project also has a separate public art program as part of the project construction. Through the implementation of this Library program and working with the Oakland Museum of California, needed improvements to the City's program were identified. These improvements include addressing gifts of artwork, funding artwork maintenance, and requiring acquisition agreements from donors and project proponents. The implementation of the Library program also establishes the City's public art collection – artwork owned and maintained by the City, and provisions must be made for this collection. For these reasons, the proposed ordinance makes three changes to the Municipal Code.

Repeal Chapter 6-26, Public Art. The program should move beyond a public art requirement for new development projects and be expanded to include the acquisition of artwork from other sources and the maintenance of the City-owned artwork. This expanded program includes more elements than just a requirement of new development. For this reason, the provisions have been moved in the Municipal Code to Title 11 – Public Property and Works.

Add Chapter 2-12, Public Art Commission. The current Section 6-2604(b) states that an arts committee will be appointed by the City Council. A committee was appointed for the Library

program, but no official body was established to review artwork proposals resulting from new development or gifts of artwork. Establishing a public art commission should not affect the functioning of the Library Public Art Committee. This Committee has the defined and limited task to acquire artwork for the new Library with $500,000 designated in project construction budget.

Add Chapter 11-7, Public Art. At its May 14, 2007 meeting, the City Council directed staff to amend the Public Art ordinance to address gifts of artworks. This direction followed a publicized controversy in Moraga over a proposed gift of artwork and after staff had received a number of inquiries about such gifts to the new Library. Oakland Museum staff strongly recommended that the City adopt a policy and suggested the City of Oakland's as a model. In addition, provisions for agreements with developers, maintenance programs, more comprehensive artwork criteria, and deaccession of artworks are included. To facilitate the review of the new chapter, a copy of Chapter 6-26 is attached with the references to where the current provisions have moved.

Recommendation

Introduce Ordinance No. 578, and continue to September 22, 2008 for second reading and adoption.

Attachments

Proposed Ordinance No. 578
Chapter 6-26, Public Art, annotated with references to new Chapter 11-7

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

Amending the Lafayette Municipal Code for Public Art by repealing Chapter 6-26, Public Art, and adding Chapter 2-12, Public Art Commission, and Chapter 11-7, Public Art	)	Ordinance No. 578

The City Council of the City of Lafayette does ordain as follows:

Section 1. Findings. The City Council finds the following:

1. The Lafayette Municipal Code includes public art requirements for new development, and it has been determined that the public art program should be expanded to include selection, acquisition and donation of artworks for a City of Lafayette Public Art Collection.

2. This Ordinance amends the Lafayette Municipal Code to provide for an expanded public art program, including establishing the Public Art Commission.

3. It has been determined with certainty that the amendments described in this Ordinance will not have an adverse significant effect on the environment, and are therefore not subject to the requirements of the California Environmental Quality Act (Section 15061(b)(3), CEQA Guidelines).

4. This Ordinance is consistent with the goals and policies of the General Plan as described in the public record for these amendments.

Section 2. The Lafayette Municipal Code is amended by repealing Chapter 6-26, Public Art.

Section 3. Title 2, Administration, of the Lafayette Municipal Code is amended by adding the following chapter:

"Chapter 2-12
Public Art Commission

2-1201 Creation of public art commission.
2-1202 Qualifications.
2-1203 Term of office.
2-1204 Removal or vacancy.
2-1205 No compensation.
2-1206 Time and place of regular meetings.
2-1207 Appointments of chair and vice-chair.
2-1208 Record of proceedings.
2-1209 Quorum.
2-1210 Absence from meetings.
2-1211 Duties of officers.
2-1212 Duties of the commission.

2-1201 Creation of public art commission.

A public art commission in the city of Lafayette is established to guide the public art program, as described in chapter 11-7 of this code, and to serve as public art advisors to the city council, commissions and other boards. The commission consists of seven members appointed by the city council.

2-1202 Qualifications.

Each member of the commission will be a resident of the city. Members will, by experience, training, education, occupation or avocation, have demonstrated knowledge of and interest in the visual arts.

2-1203 Term of office.

The term of office of each member of the commission is four years. Each member serves until a successor is appointed.

2-1204 Removal or vacancy.

A member of the commission may be removed by a majority vote of the city council. A vacancy is filled in the same manner as the original appointment. A person appointed to fill a vacancy serves for the remainder of the unexpired term.

2-1205 No compensation.

Members of the commission serve without compensation.

2-1206 Time and place of regular meetings.

The commission will meet at least once a month at a time and place in Lafayette designated by the commission. Commission meetings are open to the public and will be noticed in accordance with law.

2-1207 Appointments of chair and vice-chair.

The commission members will designate the chair and vice-chair of the commission from among the membership. Each chair and vice-chair term will be one year.

2-1208 Record of proceedings.

The commission will keep a public record of its proceedings, including findings and decisions.

2-1209 Quorum.

Four members of the commission will constitute a quorum for the transaction of business.

2-1210 Absence from meetings.

A. If a member of the commission is absent without cause from three successive regular meetings of the commission, the office becomes vacant automatically. The commission will immediately notify the city council of the vacancy.

B. A member is not absent without cause if his or her absence is due to illness or is unavoidable, and the member gives the chair written notice before the day of the meeting that he or she will be absent and giving the reason for the absence.

2-1211 Duties of officers.

A. Chair. The chair will preside at all meetings of the commission.

B. Vice-chair. The vice-chair will serve as the chair in the absence or inability of the chair to preside.

2-1212 Duties of the commission.

The commission will:

A. Advise the city in matters pertaining to the quality, quantity, scope and style of public art;

B. Prepare and regularly update a public art master plan for adoption by the city council;

C. Review and make recommendations to the city council on all public art acquisitions and gifts;

D. Review and make recommendations to the city council on deaccessioning of artworks, when necessary;

E. Serve as stewards of the city of Lafayette public art collection; and

F. Serve as goodwill ambassadors of the public art program to the community."

Section 4. Title 11, Public Property and Works, of the Lafayette Municipal Code is amended to add the following chapter:

"Part 3. Public Art

Chapter 11-7
Public Art

Sections:

11-701 Purpose.
11-702 Definitions.
11-703 Public art requirement.
11-704 Review process.
11-705 Gifts of artwork.
11-706 Criteria for public art.
11-707 Ownership; maintenance.
11-708 Deaccession.
11-709 Public art fund.

11-701 Purpose.

The purpose of this chapter is to:

A. Establish a public art program and its administration.

B. Establish the city of Lafayette public art collection.

C. Contribute to the cultural enrichment of the community by adding public art that is of the highest quality, visually stimulating and enduring value.

D. Ensure that public art is incorporated into project planning at the earliest possible stage.

E. Establish public art gift policies and procedures.

11-702 Definitions.

A. "Artist" means a person who has an established reputation of artistic excellence in the visual, performance, literary and/or media arts, as judged by peers, through a record of exhibitions, public commissions, sale of artworks, and/or educational attainment.

B. "Artwork" means all forms of art created by an artist and conceived in any discipline or medium, including visual, performance, literary, media and temporary works.

C. "City of Lafayette public art collection" or "city collection" means all artworks owned by the city of Lafayette or are installed on property under the jurisdiction of the city.

D. "Construction or alteration" means new construction, or the rehabilitation, renovation, remodeling or improvement of more than fifty (50) percent of the gross square footage of an existing structure.

E. "Construction or alteration cost" means the cost to build a new structure or alter an existing structure as determined by Contra Costa Building Inspection in accordance with the most current building valuation data provided by the International Conference of Building Officials for use in determining project valuation.

F. "Cost of artwork" means the total cost of design, manufacture, and installation.

G. "Deaccession" means the procedure for the removal of an artwork.

H. "Donor" means an individual, group, organization, or business that proposes a public artwork for donation and placement or installation at a public site under city jurisdiction. When applicable, a donor is the artist(s) who created the proposed gift.

I. "Gift" means an existing or proposed artwork offered as a donation to the city for placement or installation at a public site under city jurisdiction. Alternatively, a gift is monetary for the purpose of acquiring public art for the city.

J. "Maintenance" means actions taken to retard or prevent damage to artwork by control of the environment and/or treatment of the artwork on a routine basis.

K. "Public art" means artworks of sculpture, murals, photography, and original works of graphic art, waterworks, fiberworks, neon, glass, mosaics, or any combination of forms of visual media, furnishing or fixtures permanently affixed to a structure or its grounds, or a combination thereof displayed at a public place.

L. "Public art commission" or "commission" means the commission appointed by the city council pursuant to chapter 2-12.

M. "Public place" means any exterior area on public or private property that is easily accessible and clearly visible to the general public. If located on private property, the area will be clearly visible from adjacent public property, such as a street, sidewalk, park or plaza.

N. "Public property" means property, including right-of-way, owned and/or under the jurisdiction of the city or other public agency.

11-703 Public art requirement.

A. Public art will be installed as a project requirement for the construction or exterior alteration of a structure or structures totaling 10,000 square feet or more when subject to the provisions of title 6 of this code. The installation shall be on the project site. The installation may be at an off-site public place, if requested by the project applicant, and the request is reviewed by the commission and approved by the city council. The cost of artwork will be an amount not less than one (1) percent of the construction or alteration cost.

B. In lieu of meeting the requirement in subsection 11-703A, the city council may allow a project applicant to pay a fee equal to one (1) percent of the construction or alteration cost when it is found that location, siting or scale makes the provision of public art inappropriate or infeasible, or the council agrees with the applicant's reasons for not integrating public art into the project. In-lieu fees will be placed in the city's public art fund.

C. The public art requirement will not apply to the following activities:
   1. Underground public works projects;
   2. Street or sidewalk repairs;
   3. Tree planting or median landscaping;
   4. Remodeling, repair or reconstruction of a structure damaged by fire, flooding, wind, earthquake or other calamity;
   5. Affordable housing construction or alteration projects or the portion of a market-rate project designated for affordable housing; and/or
   6. Construction or alteration of a structure by a public or nonprofit institution.

11-704 Review process.

A. An applicant seeking approval of a project subject to the requirements of section 11-703 will submit a public art application and fee, as established by the city council, concurrent with other required project applications to the planning division. The application will include a description of the proposed artwork, budget for design, fabrication, transportation, and installation, resume of the artist, and a maintenance program for the artwork.

B. The commission will consider the public art application. The commission will consider the public art proposal based on the criteria in section 11-706 or an in-lieu request, and make a recommendation to the city council.

C. Upon receipt of the commission's recommendation, the city council will consider the public art proposal based on the criteria in section 11-706 or an in-lieu request, and will approve or deny the proposal or request.

D. Agreement. If the city council approves the proposed artwork for public property, a formal agreement will be executed between the city and the project applicant. This agreement will include the costs, responsibilities, and schedule of all aspects of the project, including project funding, fabrication, site preparation, installation, maintenance requirements, transfer of title, applicant's and/or artist's rights, project supervision, documentation, an identification plaque, city's rights (including deaccessioning), and other requirements established by the city.

E. Approved public art will be installed prior to a certificate of occupancy being issued for the project.

F. An in-lieu fee will be paid to the public art fund prior to the first building permit being issued for the project.

G. Deaccession. The alteration or removal of public art that was installed as a requirement of this chapter will be subject to section 11-708.

11-705 Gifts of artwork.

A. Gifts of artwork considered.

1. The city will consider a donor's offer of an existing artwork, commission of an artwork by a specific artist or artists, or to commission an artwork through a competitive public process.

2. The city will consider proposed gifts only with the understanding that no city funds will be required for fabrication, siting or installation of the artwork.

3. Donors will be required to provide a maintenance program for the proposed gift, including estimated maintenance costs. Excessive maintenance costs may be grounds for rejection of the gift.

B. Review process.

1. All proposed gifts to the city will be referred to the commission. The commission's recommendation on the acceptance or rejection of proposed gifts will be referred to the city council for final action.

2. If the city council approves the acceptance of a gift, a formal agreement will be executed between the city and the donor and/or artist. This agreement will include the costs, responsibilities, and schedule of all aspects of the project, including project funding, fabrication, site preparation, installation, maintenance requirements, transfer of title, donor's and/or artist's rights, project supervision, documentation, an identification plaque, city's rights (including deaccessioning), and other requirements established by the city.

C. Review criteria; standards for acceptance.

1. The proposed artwork will be reviewed based on the criteria listed in section 11-706.

2. Budget. Consideration will include an evaluation of the donor's proposed budget and the artist's ability to successfully complete the project within the proposed budget, and review to assess realistic estimates and comprehensiveness of the budget as it address all costs of the proposal.

3. Unrestricted gifts. Proposed gifts to the city will be clear and unrestricted.

4. Unique artworks. Only one-of-a-kind artworks will be considered, with the exception of prints, photographs or other limited-edition artworks of high quality.

5. Cost of artwork. Acceptance is contingent upon receipt by the city of payment from the donor for all costs associated with the gift that not covered by the donor directly, such as transportation and installation.

D. Alterations to proposed artwork design. Any significant change to the design or concept made by the artist or donor after approval of the gift proposal must be reviewed and recommended by the commission and approved by the city council.

E. Review of fabrication and installation. Artworks accepted from maquettes or drawings will be subject to city review throughout fabrication and installation. Specific plans for site design, installation, maintenance and protection will be submitted to the city for approvals.

11-706 Criteria for public art.

A. Guidelines for the approval of public art will include, but are not limited to the following criteria:

1. Aesthetic quality. The foremost consideration will be the inherent quality of the proposed artwork as assessed by the critical review of the public art commission. The history, reputation and/or promise of the artist may also be key considerations.

2. Relationship to the collection and to the community. The proposed artwork will be analyzed for its potential relationship to the city's present collection, the requirements of this chapter, and whether it will enhance the aesthetic quality of the community.

3. Compatibility. Conceptual compatibility and appropriateness of the proposed artwork to the surrounding built and/or natural environment will be factors for consideration, and will include scale, form, content and design.

4. Materials, fabrication and installation. The commission will evaluate the existing artwork's material or the artist's proposed materials and their appropriateness as regards structural and surface integrity, protection against theft, vandalism, public safety, and weathering, and an analysis of long-term maintenance needs. The commission will also evaluate the proposed method of installation and an evaluation of safety and structural factors involved in the installation.

B. The following items will not be considered as public art:
1. Art objects which are mass-produced from a standard design;
2. Reproductions of original artworks;
3. Decorative, ornamental or functional elements which are designed by the project architect as opposed to an artist commissioned for the purpose of creating the artwork; or
4. Landscape architecture and landscape.

11-707 Ownership; maintenance.

A. Ownership. If the artwork is installed on private property as part of an approved project, the property owner will own the artwork. The city will own artwork installed on public property as part of the city collection.

B. Maintenance. For artwork installed on private property as part of an approved project, the property owner will be responsible for maintenance for the life of the artwork. For artwork on public property, the city will be responsible for maintenance, except when the artwork is deaccessioned pursuant to section 11-708.

11-708 Deaccession.

A. Public art on private property. Public art that was installed as a requirement of this chapter will not be removed or altered unless the replacement or alteration is reviewed by the commission and approved by the city council pursuant to section 11-704.

B. Public art on public property. In accepting an artwork into its collection, the city will not be bound by any agreement with a project applicant or donor of artwork that restricts its ability to act in the city's best interests. Nothing in the acceptance of an artwork will prevent the city from approving subsequent disposal (removal, relocation, and/or sale) of such artwork if it serves the city's best interest to do so. When disposal is proposed, the commission will review the proposal and make a recommendation to the city council for final action. The city will deaccession and sell or otherwise dispose of artworks in its collection in accordance with the limitations of the California Preservation Act (Civil Code 987) and the Visual Artists Rights Act of 1990 (17 U.S.C. 106A and 113(d)).

11-710 Public art fund.

A. In-lieu fees will be placed into a separate public art fund maintained by the city. Other funds designated for public art, such as awards and gifts, will be placed into the separate fund. The fund will be used exclusively to:
   1. Provide sites for public art;
   2. Acquire or install public art;
   3. Commission public art for a specific site; and/or
   4. Maintain artworks in the city of Lafayette public art collection.

B. The public art commission will recommend to the city council how the public art fund be expended."

Section 5. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision will not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 5. Publication. The City Clerk will either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced and amended at a meeting of the Lafayette City Council held on September 8, 2008, and adopted and ordered published at a meeting of the City Council held on September 22, 2008 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Michael Anderson, Mayor

ATTEST:

Joanne Robbins, City Clerk

Chapter 6-26

PUBLIC ART

Sections:

6-2600	**Purpose.**
6-2601	**Definitions.**
6-2602	**Public art or in-lieu fee requirement.**
6-2603	**Exceptions.**
6-2604	**Public art approval process.**
6-2605	**Ownership, maintenance and removal of public art.**
6-2606	**Guidelines for public art.**
6-2607	**Public Art Fund.**

6-2600 Purpose.

The purpose of this chapter is to:

(a) Implement a general plan goal to support public art and a general plan policy to promote public art that reflects the cultural life of the community;

11-701C (b) Help make the community more culturally rich and visually stimulating; and

11-701D (c) Ensure that public art planning is incorporated into development project planning at the earliest possible stage.

(Ord. 546 § 2 (part), 2004)

6-2601 Definitions.

In this chapter, unless the context otherwise requires:

11-702E (a) "Construction or alteration cost" means the cost to build a new structure or alter an existing structure as determined by Contra Costa Building Inspection in accordance with the most current building valuation data provided by the International Conference of Building Officials for use in determining project valuation.

11-702D (b) "Construction or alteration" means new construction or the rehabilitation, renovation, remodeling or improvement of more than 50 percent of the gross square footage of an existing structure.

11-702K (c) "Public art" means sculpture, murals, photography and original works of graphic art, waterworks, fiberworks, neon, glass, mosaics or any combination of forms of media, furnishing or fixtures permanently affixed to a structure or its grounds, or a combination thereof, displayed in a public place.

11-702M (d) "Public place" means any exterior area on public or private property which is easily accessible and clearly visible to the general public. If located on private property, the area shall be open to the general public and clearly visible from adjacent public property, such as a street, sidewalk, park or plaza.

(Ord. 546 § 2 (part), 2004)

6-2602 Public art or in-lieu fee requirement.

11-703A (a) Public art shall be installed as a project requirement for the construction or exterior alteration of a structure or structures totaling 10,000 square feet or more. The installation may be on the project site or at an off-site public place. The public art shall cost an amount not less than one percent of the construction or alteration cost.

11-703B (b) In lieu of meeting the requirement in subsection 6-172A, the city council may allow a project applicant to pay a fee equal to one percent of the construction or alteration cost when it is found that the location, siting or scale makes the provision of public art inappropriate or infeasible or the council agrees with the applicant's reasons for not integrating public art to the project. In lieu fees shall be placed in a public art fund.

(Ord. 546 § 2 (part), 2004)

11-703C **6-2603 Exceptions.**

The requirements of this chapter shall not apply to the following activities:

(a) Underground public works projects;
(b) Street or sidewalk repairs;
(c) Tree planting or median landscaping;
(d) Remodeling, repair or reconstruction of a structure damaged by fire, flooding, wind, earthquake or other calamity;
(e) Affordable housing construction or alteration projects;
(f) Construction or alteration of a structure to be occupied by a public or nonprofit institution.

(Ord. 546 § 2 (part), 2004)

6-2604 Public art approval process.

11-704A (a) The applicant seeking approval of a project subject to the requirements of this chapter shall submit a public art application and fee, as established by the city council, concurrent with other required project applications to the planning division.

11-704B (b) An arts committee appointed by the city council, shall consider the public art application. The committee shall consider the public art proposal based on the guidelines in Section 6-176 or an in-lieu fee request, and make a recommendation to the city council.

11-704C (c) Upon receipt of the art committee's recommendation, the city council shall consider the public art proposal based on the guidelines in Section 6-176 or an in-lieu request, and shall approve or deny the proposal or request.

11-704F (d) Approved public art shall be installed prior to a certificate of occupancy being issued for the project.

11-704G (e) An in-lieu fee shall be paid prior to the first building permit being issued for the project.

(Ord. 546 § 2 (part), 2004)

6-2605 Ownership, maintenance and removal of public art.

11-707A (a) Ownership. If the public art is installed on private property as part of an approved project, the property owner shall own the public art. The city shall own public art installed on public property.

11-707B (b) Maintenance. The owner shall maintain the public art in a manner to preserve the original integrity of the work.

(c) Removal of public art. No public art shall be removed or altered unless the replacement or alteration of public art is approved pursuant to Section 6-174.

(Ord. 546 § 2 (part), 2004)

6-2606 Guidelines for public art.

(a) Guidelines for the approval of public art shall include, but are not limited, to the following criteria:

1. The composition of the public art shall be of a permanent-type of material in order to be durable against vandalism, theft and weather, and in order to require a low level of maintenance.
2. The public art shall be related in terms of scale, material, form and content to immediate and adjacent buildings and landscaping so that it complements the site and surrounding environment.
3. The public art shall be designed and constructed by persons experienced in the production of such artwork.

11-706B(b) The following items shall not be considered as public art:

1. Art objects which are mass-produced from a standard design.
2. Reproductions of original art works.
3. Decorative, ornamental or function elements which are designed by the project architect as opposed to an artist commissioned for the purpose of creating the public art.
4. Landscape architecture and landscaping gardening except where such elements are designed or approved by the artist and are an integral part of the public art.
5. Services or utilities necessary to operate or maintain the public art.

(Ord. 546 § 2 (part), 2004)

11-710 **6-2607 Public art fund.**

In lieu fees shall be placed in a public art fund maintained by the city. The fund shall be used exclusively to:

(a) Provide sites for public art;

(b) Acquire or install public art;

(c) Commission public art for a specific site; or

(d) Maintain public art.

(Ord. 546 § 2 (part), 2004)